

REFERENCE TITLE: state treasurer; independent legal counsel

State of Arizona
Senate
Forty-eighth Legislature
Second Regular Session
2008

SB 1054

Introduced by
Senator Gray C

AN ACT

AMENDING SECTIONS 41-172, 41-191.09 AND 41-192, ARIZONA REVISED STATUTES;
RELATING TO THE OFFICE OF THE STATE TREASURER.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 41-172, Arizona Revised Statutes, is amended to
3 read:

4 41-172. Duties; administering oaths; appointment of deputy
5 state treasurer

6 A. The state treasurer shall:

7 1. Authenticate writings and documents certified by him with the seal
8 of his office.

9 2. Receive and keep in secure custody all monies that belong to the
10 state and that are not required to be received and kept by some other person.

11 3. File and keep the documentation delivered to the treasurer when
12 monies are deposited into the treasury.

13 4. Deliver to each person depositing money into the treasury a
14 confirmation showing the date, amount and depositing agency and shall provide
15 a unique identifying number for each confirmation.

16 5. Pay warrants drawn by the department of administration in the order
17 in which they are presented.

18 6. Keep an account of all monies received and disbursed, and keep
19 separate accounts of the different funds and appropriations of money.

20 7. Give information in writing as to the condition of the state
21 treasury, or on any subject relating to the duties of the treasurer, at the
22 request of a member of the legislature.

23 8. Deliver to the governor and the department of administration,
24 monthly, an accurate statement of receipts and expenditures of public monies
25 for the preceding month, containing a complete exhibit of all the public
26 monies received and paid ~~from~~ BY the state ~~treasury~~ TREASURER, showing, under
27 separate heads, on what accounts and from what sources received, and for what
28 particular object or service the monies have been paid. The treasurer shall
29 deliver to the governor a similar statement on or before November 1 each year
30 for the preceding fiscal year. The statement shall also include an estimate
31 of the invested balance including the general fund share of that balance as
32 of June 30 of the preceding fiscal year. The statements are public records
33 available for inspection at the office of the state treasurer.

34 9. On or before February 1 of each year, in coordination with the
35 director of the department of administration, submit to the joint legislative
36 budget committee a report explaining any differences between the department
37 of administration's estimate of the previous fiscal year's state general fund
38 ending balance submitted pursuant to section 35-131 and the state treasurer's
39 estimate of the invested balance including the general fund share of that
40 balance as of June 30 of the previous fiscal year submitted pursuant to
41 paragraph 8 ~~of this section~~.

42 10. Exercise those specific powers of the surveyor-general as a member
43 of the selection board established under section 37-202.

44 B. The state treasurer may administer all oaths prescribed by law in
45 matters touching the duties of the office of the state treasurer, may appoint

1 a deputy state treasurer, may qualify and select investment managers or
2 advisors pursuant to section 35-318 and shall perform other duties required
3 by other laws of this state.

4 C. THE STATE TREASURER MAY EMPLOY OR CONTRACT FOR LEGAL COUNSEL THAT
5 IS INDEPENDENT FROM THE ATTORNEY GENERAL. CONTRACTS FOR OUTSIDE LEGAL
6 SERVICES ARE EXEMPT FROM CHAPTER 23 OF THIS TITLE.

7 ~~C.~~ D. The state treasurer may obtain criminal history record
8 information pursuant to section 41-1750, subsection G from the department of
9 public safety for the purpose of employment of personnel.

10 Sec. 2. Section 41-191.09, Arizona Revised Statutes, is amended to
11 read:

12 41-191.09. Attorney general legal services cost allocation
13 fund; contributions; exemptions

14 A. The attorney general legal services cost allocation fund is
15 established for the purpose of reimbursing the department of law for general
16 agency counsel. Monies in the fund are subject to legislative appropriation.
17 The attorney general shall administer the fund.

18 B. ~~Beginning July 1, 2006,~~ All state agency appropriated and
19 nonappropriated funds shall contribute a pro rata share of general agency
20 counsel services provided by the department of law. The pro rata share is
21 payable by payroll fund source, and the resultant amount shall be deposited
22 in the attorney general legal services cost allocation fund. ~~Beginning~~
23 ~~July 1, 2007,~~ The pro rata share for each fund shall be 0.675 per cent of the
24 total payroll. For the purposes of this subsection, "total payroll" includes
25 federal monies, state general fund monies, special revenue funds,
26 intergovernmental revenue monies, trust funds and other payroll fund sources.

27 C. A claim for the pro rata share percentage payment shall be
28 submitted according to the fund source, with the accompanying payroll, to the
29 department of administration for deposit in the attorney general legal
30 services cost allocation fund.

31 D. The following agencies are exempt from this section:

- 32 1. The department of water resources.
- 33 2. The residential utility consumer office.
- 34 3. The industrial commission.
- 35 4. The universities and the Arizona board of regents.
- 36 5. The auditor general.
- 37 6. The corporation commission.
- 38 7. The office of the governor.
- 39 8. The department of law.
- 40 9. The house of representatives.
- 41 10. The senate.
- 42 11. The joint legislative budget committee.
- 43 12. The Arizona state library, archives and public records.
- 44 13. The legislative council.
- 45 14. The department of administration risk management fund.

- 1 15. The department of transportation.
- 2 16. The Arizona game and fish department.
- 3 17. The department of economic security.
- 4 18. The Arizona health care cost containment system.
- 5 19. The superior court.
- 6 20. The court of appeals.
- 7 21. The supreme court.
- 8 22. The Arizona department of agriculture and councils that receive
- 9 administrative and budgetary services from the Arizona department of
- 10 agriculture.
- 11 23. All self-supporting regulatory agencies as determined pursuant to
- 12 section 35-143.01.
- 13 24. **THE OFFICE OF THE STATE TREASURER.**
- 14 E. Monies in the attorney general legal services cost allocation fund
- 15 are exempt from lapsing to the state general fund at the end of each fiscal
- 16 year.
- 17 Sec. 3. Section 41-192, Arizona Revised Statutes, is amended to read:
- 18 41-192. Powers and duties of attorney general; restrictions on
- 19 state agencies as to legal counsel; exceptions
- 20 A. The attorney general shall have charge of and direct the department
- 21 of law and shall serve as chief legal officer of the state. The attorney
- 22 general shall:
 - 23 1. Be the legal advisor of the departments of this state and render
 - 24 such legal services as the departments require.
 - 25 2. Establish administrative and operational policies and procedures
 - 26 within his department.
 - 27 3. Approve long-range plans for developing departmental programs
 - 28 therein, and coordinate the legal services required by other departments of
 - 29 this state or other state agencies.
 - 30 4. Represent school districts and governing boards of school districts
 - 31 in any lawsuit involving a conflict of interest with other county offices.
 - 32 5. Represent political subdivisions, school districts and
 - 33 municipalities in suits to enforce state or federal statutes pertaining to
 - 34 antitrust, restraint of trade or price-fixing activities or conspiracies,
 - 35 ~~provided that~~ IF the attorney general ~~shall notify~~ NOTIFIES in writing ~~such~~
 - 36 THE political subdivisions, school districts and municipalities of the
 - 37 attorney general's intention to bring any such action on its behalf. At any
 - 38 time within thirty days after ~~such~~ THE notification, ~~such~~ THE political
 - 39 subdivisions, school districts and municipalities ~~may~~, by formal resolution
 - 40 of its governing body, MAY withdraw the authority of the attorney general to
 - 41 bring the intended action on its behalf.
 - 42 6. In any action brought by the attorney general pursuant to state or
 - 43 federal statutes pertaining to antitrust, restraint of trade, or price-fixing
 - 44 activities or conspiracies for the recovery of damages by this state or any
 - 45 of its political subdivisions, school districts or municipalities, in

1 addition to the attorney general's other powers and authority, the attorney
2 general on behalf of this state may enter into contracts relating to the
3 investigation and prosecution of such action with any other party plaintiff
4 who has brought a similar action for the recovery of damages and with whom
5 the attorney general finds it advantageous to act jointly or to share common
6 expenses or to cooperate in any manner relative to such action. In any such
7 action, notwithstanding any other laws to the contrary, the attorney general
8 may undertake, among other things, to render legal services as special
9 counsel or to obtain the legal services of special counsel from any
10 department or agency of the United States, of this state or any other state
11 or any department or agency thereof or any county, city, public corporation
12 or public district in this state or in any other state that has brought or
13 intends to bring a similar action for the recovery of damages or their duly
14 authorized legal representatives in such action.

15 7. Organize the civil rights division within the department of law and
16 administer such division pursuant to the powers and duties provided in
17 chapter 9 of this title.

18 8. Compile, publish and distribute to all state agencies, departments,
19 boards, commissions and councils, and to other persons and government
20 entities on request, at least every ten years, the Arizona agency handbook
21 that sets forth and explains the major state laws that govern state agencies,
22 including information on the laws relating to bribery, conflicts of interest,
23 contracting with the government, disclosure of public information,
24 discrimination, nepotism, financial disclosure, gifts and extra compensation,
25 incompatible employment, political activity by employees, public access and
26 misuse of public resources for personal gain. A supplement to the handbook
27 reflecting revisions to the information contained in the handbook shall be
28 compiled and distributed by the attorney general as deemed necessary.

29 B. Except as otherwise provided by law, the attorney general may:

30 1. Organize the department into such bureaus, subdivisions or units as
31 he deems most efficient and economical, and consolidate or abolish them.

32 2. Adopt rules for the orderly conduct of the business of the
33 department.

34 3. Employ and assign assistant attorneys general and other employees
35 necessary to perform the functions of the department.

36 4. Compromise or settle any action or claim by or against this state
37 or any department, board or agency ~~thereof~~ OF THIS STATE. ~~Where-such~~ IF THE
38 compromise or settlement involves a particular department, board or agency of
39 this state, the compromise or settlement shall be first approved by ~~such~~ THE
40 department, board or agency. ~~Where~~ IF no department or agency is named or
41 otherwise materially involved, the approval of the governor shall be first
42 obtained.

43 5. Charge reasonable fees for distributing official publications,
44 including attorney general legal opinions and the Arizona agency handbook.

1 The fees received shall be transmitted to the state treasurer for deposit in
2 the state general fund.

3 C. Assistants and employees in any legal division subject to a merit
4 system prior to March 6, 1953 shall remain subject thereto.

5 D. The powers and duties of a bureau, subdivision or unit shall be
6 limited to those assigned by law to the department.

7 E. Notwithstanding any law to the contrary, except as provided in
8 subsections F and G of this section, no state agency other than the attorney
9 general shall employ legal counsel or make an expenditure or incur an
10 indebtedness for legal services, but the following are exempt from this
11 section:

- 12 1. The director of water resources.
- 13 2. The residential utility consumer office.
- 14 3. The industrial commission.
- 15 4. The Arizona board of regents.
- 16 5. The auditor general.
- 17 6. The corporation commissioners and the corporation commission other
18 than the securities division.
- 19 7. The advocate for private property rights.
- 20 8. The office of the governor.
- 21 9. The constitutional defense council.

22 10. THE OFFICE OF THE STATE TREASURER.

23 F. If the attorney general determines that he is disqualified from
24 providing judicial or quasi-judicial legal representation or legal services
25 on behalf of any state agency in relation to any matter, the attorney general
26 shall give written notification to the state agency affected. If the agency
27 has received written notification from the attorney general that the attorney
28 general is disqualified from providing judicial or quasi-judicial legal
29 representation or legal services in relation to any particular matter, the
30 state agency is authorized to make expenditures and incur indebtedness to
31 employ attorneys to provide the representation or services.

32 G. If the attorney general and the director of the department of
33 agriculture cannot agree on the final disposition of a pesticide complaint
34 under section 3-368, if the attorney general and the director determine that
35 a conflict of interest exists as to any matter or if the attorney general and
36 the director determine that the attorney general does not have the expertise
37 or attorneys available to handle a matter, the director is authorized to make
38 expenditures and incur indebtedness to employ attorneys to provide
39 representation or services to the department with regard to that matter.

40 H. Any department or agency of this state authorized by law to
41 maintain a legal division or incur expenses for legal services from funds
42 derived from sources other than the general revenue of the state, or from any
43 special or trust fund, shall pay from such source of revenue or special or
44 trust fund into the general fund of the state, to the extent such funds are
45 available and upon a reimbursable basis for warrants drawn, the amount

1 actually expended by the department of law within legislative appropriations
2 for such legal division or legal services.

3 I. Appropriations made pursuant to subsection H of this section shall
4 not be subject to lapsing provisions otherwise provided by law. Services for
5 departments or agencies to which this subsection and subsection G of this
6 section are applicable shall be performed by special or regular assistants to
7 the attorney general.

8 J. Notwithstanding ~~the provisions of~~ section 35-148, monies received
9 by the attorney general from charges to state agencies and political
10 subdivisions for legal services relating to interagency service agreements
11 shall be deposited, pursuant to sections 35-146 and 35-147, in an attorney
12 general agency services fund. Monies in the fund are subject to legislative
13 appropriation and are exempt from the provisions of section 35-190,~~—~~ relating
14 to lapsing of appropriations.